

*Political Liberalism in Crisis*

The Deep Conflict between Sex Equality and Religious Freedom in Rawls's Political Liberalism

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## *Political Liberalism in Crisis*

### **§1. Introduction**

- 1.1. Religious Indoctrination and Civic Education
- 1.2. A Deep Tension
- 1.3. Overview

### **§2. Rawls's Aims in *Theory***

- 2.1. A Rawlsian Conception of Justice
- 2.2. Moral Development and the Stability of Justice

### **§3. Rescuing Justice as Fairness: Rawls's Political Turn**

- 3.1. The Problem of Stability in Rawls's Theory
- 3.2. A Political Conception of Justice

### **§4. The Conflict Between Religious Freedom and Sex Equality**

- 4.1. Separate Spheres
- 4.2. The Problem of the Family Revisited, Restated...Resolved?
- 4.3. A Principle in Conflict

### **§5. Does Justice as Fairness Exclude Reasonable Religious Doctrines?**

- 5.1. Illiberal Parenting in the Liberal State
- 5.2. Does Religious Education Entail Indoctrination?
- 5.3. Tan's Response
- 5.4. Rawlsian Civic Education
- 5.5. Religious Primacy and Political Stability
- 5.6. Three Options

### **§6. Rawlsian Objections**

- 6.1. Partial Compliance Theory is No Panacea
- 6.2. Liberalization and Justice for All?

## §1. Introduction

In “Political Liberalism, Justice, and Gender,” Susan Moller Okin criticizes the account of the family presented in John Rawls’s *Political Liberalism*. As I see it, Okin levels two distinct charges against Rawls.<sup>1</sup> First, she argues that his dual classification of the family as part of the basic structure of society and as a nonpolitical association is internally inconsistent. Second, she argues that he unjustifiably extends his criterion of reasonableness to patriarchal religious sects whose members aim to educate their children with beliefs that conflict with sex equality.<sup>2</sup> Okin’s second criticism appears particularly damaging to Rawls’s conception of political liberalism because sex inequality violates the principles of justice as fairness,<sup>3</sup> which according to Rawls is the most appropriate conception of justice for a well-ordered society.<sup>4</sup>

Largely in response to Okin’s criticisms, Rawls devotes a section of “The Idea of Public Reason Revisited” to refining his conception of the family as part of the basic structure of society. His essay addresses Okin’s first criticism by asserting that no domain of life exists outside the reach of justice: hence, the family is regulated by the two principles of justice as fairness. On Rawls’s revised account, a state must ensure that the internal affairs of the family do not violate the rights of persons *qua* citizens or inculcate “habits of thought and ways of feeling and conduct incompatible with democracy” in order to satisfy the demands of justice as

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<sup>1</sup> Some have argued that Okin levels three criticisms against Rawls. Andrew Smith in “Closer But Still No Cigar: On the Inadequacy of Rawls’s Reply to Okin’s ‘Political Liberalism, Justice, and Gender’” (2004) takes what I perceive to be Okin’s second criticism of Rawls as two distinct objections: one against his failure to account for the role of the family in moral development, and the other against the considerations of certain patriarchal religions as “reasonable.” In my paper I will take these two objections as one because Okin is primarily concerned with the adverse effects of raising children in patriarchal religious households.

<sup>2</sup> By “sex equality” I mean “the political equality of the sexes.” However, I shall not use this latter phrase because it is cumbersome, and more importantly because the line between comprehensive sex equality and political sex equality is not clearly defined.

<sup>3</sup> Rawls’s first principle of justice guarantees all democratic citizens the fair value of political liberties; his second principle guarantees them fair equality of opportunity (*Political Liberalism* pp. 5-6).

<sup>4</sup> Rawls first advances this claim in *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

fairness (Rawls 1999b, 160). This requirement entails that a just state must prohibit any practices that deprive women of their rights as democratic citizens or perpetuate sex inequality. At odds with this requirement is Rawls's belief that most mainstream religions, excluding fundamentalist sects, are reasonable religious doctrines (Okin 1994, 31). As a matter of principle, many reasonable mainstream religions promote the gender-structured family, an institution that, Okin believes, conflicts with sex equality.<sup>5</sup> If parents wish to indoctrinate their daughter with religious views that compromise her political liberties as a future citizen, then justice as fairness requires law to prohibit this practice.

Okin's second criticism raises an important question: *Can justice as fairness tolerate all reasonable comprehensive doctrines in the background culture of a liberal democracy?* I believe that the viability of Rawlsian political liberalism depends on there being a positive answer to this question. Because Rawls wishes to situate justice as fairness at the core of his political liberalism, a negative answer to this question would indicate that a liberal democratic society marked by reasonable pluralism could not be both just and stable<sup>6</sup>. It would suggest a problematic *tension* between justice and stability in Rawls's theory. If such a tension exists and is not resolvable in a manner consistent with both Rawls's assumptions about a well-ordered society and the aims of liberalism, then his notion of political liberalism is *unrealistically utopian*. This paper aims to show that a positive answer to this question does not exist, that there is no way to resolve the resulting tension, and that Rawls's political project fails.

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<sup>5</sup> Here I use "reasonable" in Rawls's sense of the term. By a "reasonable doctrine" Rawls means a doctrine that does not conflict with its adherents capacity to "recognize the burdens of judgment and so, among other political values, that of liberty of conscience" (Rawls 2001, 191). By "reasonable persons" he means persons who are "ready to propose certain principles (as specifying fair terms of cooperation), as well as to comply with those principles even at the expense of their own interest as circumstances require, when others are moved to do likewise" (ibid.). Unless otherwise noted, I shall use "reasonable" throughout this paper in the Rawlsian sense, and shall use it to refer to doctrines and persons that he *considers* reasonable throughout his work (e.g. traditionalist religious sects such as Roman Catholicism).

<sup>6</sup> Although it shall be discussed later in this paper, it is worth noting here that to meet the criteria of Rawlsian political liberalism a liberal democratic society must not only be stable, but stable *for the right reasons*.

### 1.1. Religious *Indoctrination and Civic Education*

In order to determine whether justice as fairness can respect the primacy of reasonable comprehensive doctrines in the background culture of democratic society, I will first examine key arguments that, if sound, shield Rawlsian liberalism from Okin's criticisms. One such argument, advanced by Michael Hand, holds that parents may expose their children to their reasonable religious doctrines without indoctrinating them.<sup>7</sup> If this claim holds, then teaching religious beliefs at odds with sex equality may not undermine Rawls's theory because at least one *method* of inculcating religious beliefs in an individual permits their revision. I will argue that Hand's argument is unsound because it rests on the dubious notion of "intellectual authority" and misconstrues the concept of "indoctrination." I will then consider a second argument, advanced by Charlene Tan, in support of religious education. Tan argues that religious indoctrination is unproblematic for autonomy and therefore, the capacity to revise one's beliefs, because the education of young children is necessarily indoctrinatory. I will argue that her conclusion in support of religious education does not resolve the tension in Rawlsian liberalism because she fails to consider how the *content* of indoctrinated beliefs and the *intensity* with which such beliefs are held may preclude their revision.

After concluding that neither Hand nor Tan demonstrate that one may inculcate religious beliefs in a young child in a way that never results in her indoctrination, I will assess the claim that Rawlsian civic education can undo the indoctrination of religious beliefs that conflict with sex equality. This claim holds that barriers to sex equality erected by illiberal religious sects will collapse in the face of the Rawlsian mandate that all citizens, women and men alike, undergo a

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<sup>7</sup> Here I use "indoctrination" in Hand's sense. For an explanation of Hand's conception of indoctrination, see pages 24-28 of this paper; for a concise definition of his conception of indoctrination see page 25.

civic education program that teaches them about their basic political rights.<sup>8</sup> I will show that this claim rests on the faulty assumption that the type of civic education advocated by Rawls can “deprogram” entrenched religious views. In particular I will focus on the fact that a Rawlsian civic education program will be marked by *liberal silence*: the idea that education in pluralist and democratic societies should avoid shaping the reasonable comprehensive beliefs of students, in order to maintain neutrality between competing conceptions of the good (Costa 8).

I will argue that even if it were the case that Rawlsian civic education could in theory reform indoctrinated religious beliefs, this alone does not satisfy the demands of Rawlsian justice. Justice as fairness *guarantees* the fair value of political liberties to *all* citizens, regardless of sex, and therefore requires that *all* democratic citizens have the freedom to revise beliefs that they come to hold via indoctrination, particularly those that conflict with the requirements of justice. It follows from this requirement that if a religious doctrine poses a threat to the fair value of its adherents’ political rights, then Rawlsian civic education must empower those individuals to revise their conceptions of the good if they so choose. Yet choosing to revise the beliefs that form one’s conception of the good presupposes that one has the ability *to choose* to revise her conception of the good. I will argue that Rawlsian civic education cannot guarantee that a citizen has the ability to revise her conception of the good, and is therefore not a legitimate resolution to the tension between sex equality and religious freedom.

### 1.2. *A Deep Tension*

Having shown that the central tension in Rawls’s theory is neither chimerical, nor resolvable through his proposed form of civic education, I will argue that the only way to resolve the tension between religious freedom and sex equality is by drawing in the boundaries of

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<sup>8</sup> Namely, such political rights as guaranteed by justice as fairness.

reasonableness. By “drawing in” I mean that Rawls’s criteria for reasonableness must exclude from the public forum members of any comprehensive doctrine who advance beliefs inconsistent with sex equality. However, it appears to me that one cannot narrow the domain of the reasonable without facing the prospect of destabilizing society. If justice as fairness requires that society exclude from public discourse all religious sects that promote ideals opposed to sex equality, and these sects could in theory destabilize the political institutions of democratic society, then Rawls has constructed a theory where the demands of justice compromise stability.

But is it necessarily the case that the requirements of justice as fairness conflict with political stability? After all, we may conceive of possible societies where all traditionalist<sup>9</sup> sects have had to evolve into liberal shadows of their former selves in order to avoid extinction. It happens that Rawls himself suggests this as a possible consequence of continued existence in a well-ordered society (Freeman 37). Despite this glimmer of hope for political liberalism, I will argue that such an objection ignores Rawls’s assumption that reasonable pluralism will mark a liberal democratic society. I also believe that this objection fails because it advocates the use of coercion in a way that appears incompatible with Rawls’s aim of stability *for the right reasons*. As I see it, the tension between religious freedom and sex equality infects Rawls’s theory like a virus, one that no appeal to the notion of a hypothetical future liberal society can cure.

### 1.3. Overview

Section I of this paper explains Rawls’s primary aims in *A Theory of Justice*. Section II addresses the problem of stability in *Theory*, and then explains how Rawls attempts to rectify this problem in *Political Liberalism*. Section III considers Okin’s criticisms of Rawls’s treatment of

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<sup>9</sup> By “traditionalist” I mean those sects considered reasonable on Rawls’s account, and hence, are not *fundamentalist*, but which still espouse ideas opposed to the modern liberal order. Examples of such sects include any that fall into the broad class of Christian evangelicals, Vaishnavism (though most Hindu sects in principle support distinctly patriarchal beliefs), Orthodox Judaism, and most Islamic sects.



the family in *Political Liberalism*, and evaluates whether his elucidated account of the family in “The Idea of Public Reason Revisited” and *Justice as Fairness: A Restatement* resolves these criticisms. Section IV argues (a) that justice as fairness requires laws prohibiting parents from indoctrinating their children with reasonable religious beliefs at odds with sex equality, and (b) that prohibiting this sort of indoctrination will undermine the stability of a democratic society marked by reasonable pluralism.

I do not wish to deny that it is logically possible to conceive of a society that meets the demands of justice as fairness. Yet I will demonstrate that the conclusions reached in Section IV indicate that the existence of such a society rests on contingencies at odds with Rawls’s assumption that reasonable pluralism will mark a well-ordered society. If justice as fairness is achievable only in societies that are not marked by reasonable pluralism, then Rawls’s overall project of conceptualizing a stable, pluralistic society underwritten by an appropriate conception of justice is futile. I shall conclude that the truth of this antecedent is unquestionable, and therefore that Rawlsian political liberalism is unrealistically utopian.

## **§2. Rawls’s Aims in *Theory***

### *2.1. A Rawlsian Conception of Justice*

John Rawls’s *A Theory of Justice* seeks to address the question, “What is the most appropriate moral conception of justice for a democratic society?” (Rawls 1999a, xiii). Rawls begins by “describing the role of justice in social cooperation” (3). The idea of *social cooperation* underlies many of the major concepts in *Theory*, including two mentioned in the main question Rawls seeks to address: the idea of a democratic society and the idea of a conception of justice. Rawls defines democratic society as “a fair system of social cooperation over time from one generation

to the next” (Rawls 2001, 5). A conception of justice is “a characteristic set of principles for assigning basic rights and duties and for determining what they take to be the proper distribution of the benefits and burdens of social cooperation” (Rawls 1999a, 5). Rawls understands the primary subject of justice—that is, the subject to which a conception of justice applies—as the *basic structure of society*. He defines the “basic structure” as “the way in which the major social institutions<sup>10</sup> distribute fundamental rights and duties and determine the division of advantages from social cooperation” (6).

In *Theory* Rawls aims to set forth a conception of justice that is realistically utopian. Namely, he aims to find the most appropriate moral conception of justice that is possible given certain fixed conditions of social life and facts about human nature (Freeman 23). For this reason Rawls sets out to define a conception of justice for a *well-ordered society*. A well-ordered society is one in which “everyone accepts the same public conception of justice, and their general acceptance is public knowledge” (21). Moreover, a well-ordered society always realizes the generally accepted conception of justice in its institutions, and all of its citizens have an effective sense of justice that leads them to want to adhere to the principles of justice (ibid.). The idea of a well-ordered society is vital to Rawls’s task in *Theory*, because it represents an “ideal social world”—the perfect framework for laying out his principles of justice (ibid). If a conception of justice were not possible in the ideal of a well-ordered society then it would be unrealistically utopian and rational persons would not seek to implement it.

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<sup>10</sup> Rawls understands “major social institutions” to include the political constitution, and principal economic and social arrangements. Examples of major social institutions are: “the legal protection of freedom of thought and liberty of conscience, competitive markets...and the [family in some form]” (*Theory* 6).

Rawls argues that his conception of *justice as fairness* is the appropriate public conception of justice for a well-ordered constitutional democracy<sup>11</sup>. Justice as fairness has two principles:

1. Each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.
2. Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all. (Rawls 1999a, 53)<sup>12</sup>

These two principles, Rawls believes, would be acceptable to the members of a well-ordered society in that they view themselves as “free and equal moral persons” (475). Rawls defines “free and equal moral persons” as individuals who “have, and view themselves as having, fundamental aims and interest in the name of which they think it legitimate to make claims on one another...a right to equal respect and consideration in determining the principles by which the basic structure of their society is to be governed...[and] a sense of justice that normally governs their conduct” (ibid.). Free and equal persons also are characterized as having “the two moral powers” necessary for social cooperation over a complete life: (a) the ability to form, revise and pursue a conception of the good, and (b) an effective sense of justice (Rawls 1999a, 17; Rawls 2001, 18-19).

The idea of “free and equal moral persons” provides the conceptual foundation for the *original position*: a hypothetical initial choice situation in which parties deprived of morally irrelevant information select principles of justice for the basic structure of society. Central to Rawls's idea of the original position is the *veil of ignorance*, which establishes an initial position of equality by depriving the parties of information morally irrelevant to the selection of

<sup>11</sup> Although they differ in important respects, I shall use the terms “liberal democracy,” “constitutional democracy,” and “liberal constitutional democracy” interchangeably throughout this paper.

<sup>12</sup> Throughout his works Rawls puts his two principles of justice through several formulations. The most dramatic revision occurs in *Political Liberalism*. For the formulation of Rawls's two principles as they appear in *Political Liberalism*, see page 14 of this paper.

principles of justice. Because the parties lack information that would give some the unfair advantage of tailoring the principles to their personal circumstances in the *object state*<sup>13</sup>, the original position in effect functions as a procedural interpretation of the conception of free and equal persons (Freeman 26-27). This means that the conception of justice chosen by the parties in the original position—justice as fairness—would be chosen by free and equal persons for underwriting the basic structure of a well-ordered society.

## 2.2. *Moral Development and the Stability of Justice*

It is important to recall that Rawls does not aim to explicate a conception of justice that is unrealistically utopian, but rather one that can be implemented in a well-ordered society. He states, “however attractive a conception of justice might be on other grounds, it is seriously defective if the principles of moral psychology are such that it fails to engender in human beings the requisite desire to act upon it” (Rawls 1999a, 398). Hence, in Part III of *Theory* Rawls outlines a two-part argument for the stability of a well-ordered society regulated by justice as fairness. He first addresses how individuals gain a sense of justice through moral development, which on his account occurs throughout a three-stage process that begins in the family. It is in the family, Rawls argues, that children develop a “morality of authority” from interactions with their parents. The next stage of moral development occurs when citizens engage in associations outside of the family, such as churches, schools, and the workplace. Here, the individual develops a sense of what Rawls calls “associational morality.” The process of moral development, according to Rawls, culminates with the individual becoming attached to the principles of justice themselves (405-419).

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<sup>13</sup> The state realized for the parties upon “exiting” the original position (the *meta state*).

Assuming that individuals have an effective sense of justice, Rawls claims that they would affirm justice as fairness because it is congruent with the human good. Rawls's view in *Theory* is that individuals would view the concept of the good as analogous to the Kantian conception of autonomy because it is characterized in terms of rational principles of choice and rationally formed desires (Freeman 24). This means that the human good comprises what it is rational for individuals to want as free and equal persons: persons given full and accurate information and having critically reflected on their ends (ibid.). Since the original position functions as a procedural interpretation of the conception of free and equal persons, and the two principles of justice as fairness would be chosen by the parties in the original position, to act from these principles "is to act autonomously in Kant's sense: it is to act for the sake of principles that express our nature as free and equal rational beings" (26). Rawls concludes that individuals would affirm the two principles of justice because they support the moral powers necessary to function autonomously.

### **§3. Rescuing Justice as Fairness: Rawls's Political Turn**

#### *3.1. The Problem of Stability in Rawls's Theory*

Rawls's argument for stability in Part III of *A Theory of Justice* rests on the assumption that the vast majority of a well-ordered society will share a comprehensive doctrine that equates the good with the Kantian conception of autonomy. Rawls comes to realize that this account of stability is inconsistent with justice as fairness, since the conditions satisfying the two principles of justice as fairness would necessarily lead to *reasonable pluralism*: the fact that "a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime" (Rawls 1993,

xviii). Given the fact of reasonable pluralism, Rawls believes that “a continuing shared understanding on one comprehensive religious, philosophical, or moral doctrine can be maintained only by the oppressive use of state power” (Rawls 1993, 37). This means that justice as fairness as a comprehensive philosophical doctrine requires the use of coercive force against members who espouse other comprehensive doctrines in order to function as a shared basis for justification. Because the oppressive use of state power violates the basic liberties protected by Rawls’s first principle of justice, he must find another way to promote stability if he wishes to salvage justice as fairness as a feasible conception of justice.

### 3.2. *A Political Conception of Justice*

In *Political Liberalism* Rawls aims to resolve the problem of stability by reconstructing justice as fairness as a *political conception* of justice that applies to the basic structure of society. In order to construct a political conception of justice, Rawls first shifts his focus from “the idea of the person as having moral personality with the full capacity of moral agency” to “that of the citizen” (Rawls 1993, xlv). For Rawls, justice as fairness now rests on the distinctly political conception of the person as “a free and equal citizen, the political person of a modern democracy with the political rights and duties of citizenship, and standing in a political relation with other citizens” (ibid). By focusing on the person *qua citizen*, there is no longer any implication that the moral powers constitute our nature as free and equal persons, or are instrumental in our achieving the fundamental human good of autonomy. Moreover, the idea of a single human good, namely the good of autonomy, is also gone from justice as fairness. For Rawls a political conception of justice should support the two moral powers—being able to form, revise and pursue a rational conception of the good, and having an effective sense of justice—because they enable free and equal democratic citizens to reap the benefits of social cooperation (Freeman 34).

Thus, political liberalism requires an argument for a political conception of justice grounded on reasons and ideas acceptable to people in their capacity as free and equal democratic citizens. Rawls calls this sort of political conception of justice “freestanding.” A *freestanding* political conception of justice does not derive its principles from the content of comprehensive moral doctrines, but rather has its own “intrinsic normative and moral ideal” (Rawls 1993, xlv). Rawls notes that citizens will derive the content of this shared ideal by “looking to the public culture itself as the shared fund of implicitly recognized basic ideas and principles” (8). He favors justice as fairness as the freestanding political conception of justice for a well-ordered constitutional democracy, since the basis of this conception consists of ideas implicit in democratic thought and culture.<sup>14</sup>

A freestanding political conception avoids ideas derived from the basis of any particular comprehensive doctrine, and its content is not adjusted to accommodate reasonable comprehensive views. Rawls appeals to the idea of an *overlapping consensus* to explain how a freestanding political conception will be stable in a democratic society. The idea of an overlapping consensus rests on the assumption that reasonable citizens in a well-ordered society can affirm the freestanding political conception for reasons derived from inside as well as outside their comprehensive worldview. According to Rawls, citizens are *reasonable* when they are “prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice; and when they agree to act on those terms, even at the cost of their own interest in a particular situation, provided that other citizens also accept those terms” (Rawls 1999b, 136). A *reasonable overlapping consensus* comprises only *reasonable*

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<sup>14</sup> For example, the idea of citizens as politically free and equal individuals has its roots in democratic thought and culture. The Lockean influenced language of the Declaration of Independence explicitly references shared democratic ideals, such as freedom and equality, which citizens of Rawls’s well-ordered society would support.

*comprehensive doctrines*: the comprehensive doctrines held by reasonable citizens. The idea of reasonable overlapping consensus effectively addresses the fact of reasonable pluralism.

A reasonable overlapping consensus supports a political conception of justice “whose principles, ideals, and standards satisfy the criterion of reciprocity” (Rawls 1999b, 172). The *criterion of reciprocity* holds that all citizens who do their part in a system of social cooperation, as specified by public rules, are to benefit appropriately as determined by a suitable benchmark (Rawls 1993, 16). This criterion requires that when reasonable citizens propose terms of social cooperation, they “must also think it at least reasonable for others to accept them, as free and equal citizens, and not as dominated or manipulated, or under the pressure of an inferior political or social position” (Rawls 1999b, 136-137).

Reciprocity thus requires democratic citizens to agree upon a collectively acceptable basis of social cooperation grounded in *public reason* (Nagel 83-84). Public reason concerns the kind of reasons appropriate for government decisions and political argument and justification, and is therefore addressed to free and equal persons in their capacity as democratic citizens and not as members of particular nonpolitical associations or endorsers of a particular conception of the good (Freeman 39-40). An important idea connected with the ideal of democratic citizenship and public reason is what Rawls calls “the duty of civility”:

[The] ideal of citizenship imposes [upon democratic citizens] a moral, not a legal, duty—the duty of civility—to be able to explain to one another...how the principles and policies they advocate and vote for can be supported by the political values of public reason. (Rawls 1993, 217)

This ideal establishes a procedural duty to justify the constitution and laws of a democratic society in terms of political values shared by all citizens. The political values invoked in public reasoning are related to this ideal in that they respond to how democratic citizens view



themselves politically: “their role as citizens, their political rights and duties, their relations to other citizens, and the proper exercise of political power” (Freeman 40).

Since a political conception of justice grounded in public reason applies to persons as democratic citizens, it assumes toleration of different conceptions of the good—including all reasonable religious, philosophical and ethical views—to the extent that they occupy the background culture of democratic society. The distinction between the *public forum* and the *background culture* marks the limit of public reason and is important for understanding Rawls’s political liberalism. Public reason applies only to persons in their capacity as citizens in the public forum—the political culture of democratic society—and not to persons as members of associations in the background culture (Drebden 325-326; Rawls 1999b, 134). To clarify, the exercise of public reason concerns political matters that affect persons *qua* citizens and does not justify the application of political principles to interactions between persons as members of nonpolitical associations.

Rawls argues for justice as fairness as the most appropriate political conception of justice for a constitutional democracy because its two principles uphold the values of liberty and equality necessary for persons to regard themselves as free and equal citizens. Justice as fairness, reconstructed as a political conception of justice, has the following two principles:

1. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; *and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.*
2. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society. (Rawls 1993, 5-6, emphasis mine)<sup>15</sup>

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<sup>15</sup> In *Justice as Fairness: A Restatement*, Rawls reformulates his first principle of justice by removing all mention of “rights”. He does so for the purpose of emphasizing his focus on a strictly negative conception of liberty. Yet I have not included, nor shall I include his principles as reformulated in the *Restatement* because I feel that they are inconsistent with his continued discussion of the *value* of political liberties. I do not believe that Rawls can

Rawls argues that his political conception of justice as fairness advances the shared political values and the criterion of reciprocity, and can serve as a basis of public reason and justification for a constitutional democracy. Additionally, he claims that the two principles of justice are designed to protect and support the two moral powers democratic citizens need to gain the advantages of social cooperation. These factors suggest that justice as fairness would “fit” within a reasonable overlapping consensus of comprehensive doctrines. If, as Rawls argues, this is the case, then a society underwritten by justice as fairness will be both just and stable.

#### §4. The Conflict Between Religious Toleration and Gender Equality

Susan Moller Okin argues that if justice as fairness must abolish the political salience of hierarchies of wealth, class, and race, then it is inconsistent for it not to question hierarchy based upon sex (Nussbaum 501). In light of Mill’s astute observation<sup>16</sup> that hierarchical sex relations are perpetuated in the family, Okin believes that any complete theory of justice must criticize the gender-structured family. On this basis she criticizes Rawls’s account of the family in *Political Liberalism*<sup>17</sup>. She levels two powerful charges against Rawls’s theory: first, that his distinction between political and nonpolitical spheres is problematic because of his view that the family is both a nonpolitical association and part of the basic structure of society; and second, that his emphasis on toleration of reasonable comprehensive doctrines and the basic institutions those

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consistently maintain that the just society should preserve the value of a set of liberties without implying that it must promote the *capacity* of individuals to utilize these liberties. Although he attempts to do away with all language connoting the idea of “positive freedom” in his later writings, Rawls’s discussion of the value of liberty suggests that his account in the *Restatement* is not entirely free from this idea.

<sup>16</sup> Mill gives this argument in *The Subjugation of Women* (1869).

<sup>17</sup> See her “Political Liberalism, Justice, and Gender” (1990).

doctrines support<sup>18</sup> necessarily conflicts with sex equality. Okin concludes that these two problems make applying the principles of justice to the family and the gender structure of society<sup>19</sup> more problematic a task than in *Theory* (25).

#### 4.1. *Separate Spheres*

For Rawls the basic structure of society consists of a society's "main political, social, and economic institutions, and how they fit together into one unified system of social cooperation from one generation to the next" (Rawls 1993, 11). The major social institutions that form the basic structure of society are unique in that they "have deep and long-term social effects and in fundamental ways shape citizens' character and aims, the kinds of persons they are and aspire to be" (68). Given the ways in which families fundamentally shape citizens' character and aspirations, Rawls rightly categorizes the family as one of the major social institutions comprising the basic structure of society (258).

However, Rawls also claims that a constitutional regime has distinct political and nonpolitical domains and that the family belongs to the nonpolitical:

...[In] a constitutional regime there is a special domain of the political...[that] is distinct from the associational, which is voluntary in ways that the political is not...[as well as] from the personal and the familial, which are affectional, again in ways the political is not. (Rawls 1993, 137)

Okin understands Rawls's claim that families are nonpolitical to mean that they exist outside the scope of the principles of justice. In her view, this claim reveals a deep inconsistency in Rawls's argument, which also holds that families form part of the basic structure of society: the primary subject of justice. How can the family be part of the primary subject to which the principles of

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<sup>18</sup> For example, Rawls considers non-fundamentalist forms of Islam reasonable doctrines, even though in principle most mainstream Islamic sects support a gender-structured family.

<sup>19</sup> The family and gender-structured society pertain to Rawls's theory, respectively, as a major social institution forming part of the basic structure of society, and as a barrier to sex equality for women. The problem of the family, for Rawls, makes the problem of sex equality stemming from a gender-structured society even more intractable.

justice apply yet exempt from the standards of justice as fairness? That it cannot be placed squarely into either domain leaves Rawls without a sound basis for isolating it from the requirements of justice. On this basis, Okin concludes that Rawls cannot exempt the family from the standards of justice as fairness on account that it defies the political-nonpolitical dichotomy.

A related problem arises from Rawls's claims regarding the nature of a person's identity. Rawls suggests that the political and nonpolitical domains function as conceptual distinctions between aspects of people's lives. For example, he states, "when citizens convert from one religion to another, or no longer affirm an established religious faith, they do not cease to be, for questions of political justice, the same persons they were before" (Rawls 1993, 30). In response to this claim, and similar ones throughout *Political Liberalism*, Okin asks, "Are persons in the just society to be regarded as 'split' into public and nonpublic, political and nonpolitical selves?" (Okin 1994, 29). If so, she asserts, a distinction between "abstract citizens" and "human beings" is problematic in that it fails to account for the way in which nonpolitical settings—such as the family—reinforce sex hierarchy and reduce women's status such that they cannot view themselves as "free and equal citizens" (ibid).

#### 4.2. *The Problem of the Family Revisited, Restated...Resolved?*

Rawls most directly addresses Okin's criticisms in his essay "The Idea of Public Reason Revisited" and in his section on the family in *Justice as Fairness: A Restatement*. In both works Rawls clarifies his distinction between political and the nonpolitical domains to demonstrate the coherence of his claim that the family is both nonpolitical and part of the basic structure of society. A domain, or sphere of life, is not on Rawls's account a "kind of space, or place, but rather is simply the result, or upshot of how the principles of political justice are applied, directly to the basic structure and indirectly to the associations within it" (Rawls 1999b, 161). He asserts

that if the nonpolitical domain is a space exempt from justice, then such a domain does not exist (ibid). On this basis he claims that the equal rights of women as citizens, and the basic rights of their children as future citizens “are inalienable and protect them wherever they are” (ibid.). How are we to reconcile these claims with Rawls’s previous claims that the principles of justice do not directly apply to the family? Are we to take these subsequent claims as modifications to his account of political liberalism?

Rawls’s assertion that the scope of justice extends to all spheres of life is entirely consistent with his political-nonpolitical dichotomy in *Political Liberalism*. To understand why this is the case, it may help to take note of Okin’s criticism that Rawls cannot separate the person into distinct political and nonpolitical selves (Okin 1994, 29). Okin may misinterpret Rawls on this point in arguing that his account creates a political-nonpolitical dichotomy within the person, when it actually distinguishes how persons function as citizens in the public forum from how they function as members of associations outside the public forum. A public conception of justice concerns the inner workings of nonpolitical associations insofar as they affect the capacity of its members to participate as free and equal citizens in a scheme of social cooperation. This means that the principles of justice apply to persons only in their *roles* as democratic citizens and not in their roles as members of churches, businesses, or families.

This does not mean, however, that justice does not apply to the internal affairs of churches, businesses or families. Rawls states only that the principles of justice do not *directly* apply to the inner workings of nonpolitical associations.<sup>20</sup> This caveat allows the law to regulate the affairs of nonpolitical associations when they interfere with the capacity of its members to

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<sup>20</sup> The principles of justice do not apply to the major institutions and associations that form the basic structure, but rather to the structure itself, which Rawls defines as: “the arrangement of society’s main institutions into a *unified system of social cooperation over time*” (*Restatement* 163, emphasis added). A political conception of justice thus applies *directly* to the system of social cooperation created by the arrangement of the major social institutions in a democratic society, and indirectly to the internal affairs of association insofar as they concern the rights of citizens.

function effectively as democratic citizens. For example, Rawls notes that the “prohibition of abuse and neglect of children, and much else, will, as constraints, be a vital part of family law” (Rawls 1999b, 160). In addition to constituting unjustifiable physical harm, the abuse and neglect of children will harm their moral and psychological development, which may in turn diminish their capacity to develop into persons who view themselves as “free and equal citizens.” A just constitutional democracy will legally prohibit child abuse and neglect on the basis that it constitutes harm to the child not as a member of his or her family, but as a future citizen. Even though the inner life of the family is not directly regulated by the principles of justice,<sup>21</sup> it nonetheless exists within the scope of justice.

I believe that Rawls’s clarification of the political-nonpolitical dichotomy defuses Okin’s first criticism. Yet, as I see it, Rawls’s remains vulnerable to her more powerful second criticism: that a conflict arises between his aims (in justice as fairness) of religious freedom for all reasonable<sup>22</sup> doctrines and sex equality. Justice as fairness requires that society achieve full sex equality because its two principles guarantee all citizens, without respect to sex, fair equality of opportunity, equal basic liberties, and the fair value of the political liberties. Yet, justice as fairness also guarantees religious freedom—the right to hold and exercise reasonable religious doctrines in the background culture—under its first principle. Rawls particularly wishes to safeguard the right to act freely in accordance with one’s *reasonable* religious doctrine in nonpolitical domains. In protecting and endorsing this right, he also supports the right of parents to raise their children in accordance with the demands of their reasonable religious views.

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<sup>21</sup> Applying the principles of justice directly to the family would create the odd requirement that all social and economic inequalities within a family be to the advantage of the least-advantaged member.

<sup>22</sup> By “reasonable,” I mean those Rawls considers reasonable. He considers all of the major religions of the world, excluding fundamentalist sects, to be reasonable doctrines.

Rawls explicitly states that the adult members of families are equal citizens, and that “no institution or association in which they are involved can violate their rights as citizens” (Rawls 2001, 166). In order to uphold the ideal of political equality in justice as fairness, law must therefore restrict practices within families that deprive women of their rights as democratic citizens. But as Okin observes, Rawls considers many religious doctrines reasonable that *as a matter of principle* promote unequal gender roles, the subordination of women, and sex hierarchy<sup>23</sup>—all of which inculcate mindsets at odds with political equality and fair opportunity for women. Aligning law with the principles of justice as fairness will require setting legal restrictions on the internal affairs of families holding reasonable religious doctrines at odds with sex equality, since such views may harm women as citizens. It follows that if the religious indoctrination of young girls leads them to accept a natural sex hierarchy, which in turn diminishes their capacity to develop into full democratic citizens, then justice as fairness requires law to prohibit their indoctrination.

I believe that Rawls fails to provide an appropriate response to Okin’s criticism that sex equality and religious freedom are necessarily at odds. In his later works he does not offer adequate recommendations as to how to resolve the internal tension between the competing aims of religious freedom and sex equality in the political conception of justice as fairness. He also regrettably defends the right to have a fully voluntary gendered division of labor in the family (Rawls 1999b, 161-162). Rawls claims that one cannot simply mandate the equal division of labor in the family and penalize those families that do not adopt it “because the division of labor in question is connected with basic liberties, including the freedom of religion” (162). This

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<sup>23</sup> Consider the unequal social and familial roles for women circumscribed *as a matter of principle* by Roman Catholicism, Islam, and Hinduism. Also consider the fact that all Semitic religions, being grounded on the Old Testament, subscribe to a religious doctrine that suggests a definite sex hierarchy from the beginning: God’s first created Adam, only subsequently creating Eve *from* Adam in order to *serve* him.

claim holds that the first principle of justice as fairness requires the toleration of all reasonable religious doctrines, even those that prescribe separate and unequal gender roles in the home.

However, in rashly condoning a practice that many believe promotes sex inequality, Rawls fails to address the problem of determining what constitutes a “fully voluntary” gendered division of domestic labor. If Rawls were to consider all cases where a woman concedes to an unequal share of domestic labor as “fully voluntary,” this would indicate a serious failure on his part to take seriously the multitude of ways in which women are systematically *coerced* into accepting a gendered division of domestic labor. As Okin points out in *Justice, Gender, and the Family*, customary gender roles inhibit women’s choices over the course of a lifetime. With regard to the division of household labor, Rawls should have considered the fact that “it is far easier in practice to switch from being a wage worker to occupying a domestic role than to do the reverse” (Okin 1989, 103). Okin’s point is this: once situated in a framework of unequal domestic labor, this framework itself will create an asymmetric dependency between wife and husband that makes her exit opportunities severely limited.<sup>24</sup> Her point shows that whether we may consider a choice to accept an unequal scheme of domestic labor as “fully voluntary” is less obvious than Rawls might have perceived.<sup>25</sup>

#### 4.3. *A Principle in Conflict*

Okin correctly asserts that justice as fairness requires sex equality, and must guarantee women the fair value of their political liberties and fair equality of opportunity. However, she claims

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<sup>24</sup> This one-sided dependency stems from the disparity in human capital that widens over time in a patriarchally structured home. In the section “Vulnerability by Marriage,” Okin refers to the accumulation of human capital as the “most important property” acquired in an “average marriage” (Okin 1989, 163).

<sup>25</sup> Okin’s point about economic dependency merely grazes the surface of why a “fully voluntary” choice is a problematic idea. For additional discussion on the preconditions for free choice, see the second half of Alan Wertheimer, *Coercion* (Princeton: Princeton University Press, 1989); also consider the section on women’s exploitation in the family in Ruth J. Sample, *Exploitation: What It is and Why It's Wrong* (Lanham: Rowman & Littlefield, Inc., 2003).



that upholding sex equality requires the state to regulate the family in a way that would compromise the religious freedom of patriarchal sects that Rawls considers reasonable. Her argument indicates a conflict *between* the principles of justice: the second principle requires fair equality of opportunity for women, which is incompatible with the scope of religious freedom protected under the first principle. This conflict, however, is a chimerical one. In lexically ordering the principles, so that the first takes precedence over the second, Rawls ensures that religious freedom has priority over fair equality of opportunity for women. The apparent tension between the principles of justice does not afflict Rawls's theory.

Justice as fairness does not escape unscathed from Okin's criticisms, as there appears to be a genuine conflict between the demands of its first principle. The first principle of justice includes religious freedom in the scheme of equal basic liberties guaranteed to all citizens. Because the first principle guarantees this scheme to all citizens irrespective of sex, it implicitly requires sex equality. Rawls's first principle, in guaranteeing the mutually exclusive ideals of sex equality and religious freedom, thus faces an internal tension. This tension is not at all like the ostensible tension between the two principles of justice: Rawls provides no rule for giving priority to certain basic liberties over others. If the conflict between sex equality and religious freedom within the first principle cannot be resolved within the framework Rawls provides, it seems unlikely that justice as fairness can function as a public conception of justice for a well-ordered society. A failure to resolve the tension in the first principle would therefore indicate that Rawls central aim in *Political Liberalism* is unrealistically utopian.<sup>26</sup>

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<sup>26</sup> Rawls aims to reconstruct justice as fairness as an appropriate conception of justice for a well-ordered society.

## §5. Does Justice as Fairness Exclude Reasonable Religious Doctrines?

Can Rawls reconcile his aim of religious toleration with achieving full sex equality? Given that the conflict between religious freedom and sex equality appears rooted in the principles of justice as fairness, the prospects for resolution appear dim. As I see it, the problem of the family so deeply plagues Rawls's theory that political liberalism is incompatible with his vision of a just liberal democracy. I will argue that justice as fairness requires laws prohibiting parents who hold religious beliefs at odds with sex equality from teaching their children such beliefs. My argument rests on four assumptions: (a) that the religious education of a young child<sup>27</sup> may be indoctrinatory solely in virtue of the content of the indoctrinated beliefs; (b) that individuals who are indoctrinated with traditionalist religious beliefs are prone to the closure of their imagination to other worldviews because of these beliefs; (c) that Rawlsian civic education cannot guarantee that indoctrinated citizens have the freedom to consider alternatives to their current doctrines and the ability to revise them; and (d) that the religious indoctrination of young girls may prevent them from becoming free and equal *citizens*. I will conclude that prohibiting parents from indoctrinating their children with religious beliefs at odds with sex equality will undermine the stability of a democratic society marked by reasonable pluralism.

### 5.1. *Illiberal Parenting in the Liberal State*

The principles of justice as fairness "impose constraints on the family on behalf of children who as society's future citizens have basic rights as such" (Rawls 1999b, 160). These constraints generally come in the form of laws designed to protect individual family members in their capacity as democratic citizens. The religious indoctrination of young girls surely falls under the

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<sup>27</sup> By "young child" I mean a person who has yet to reach an age where she can *rationally* choose whether to accept or reject claims. I will not attempt in this paper to discern the age at which one acquires this capability, as this is a fact that must be uncovered by further research in psychology and neuroscience.

type of interaction within the family that constitutes a threat to the rights of future citizens, given the profound effects it may have on their moral and psychological development. Many reasonable religious sects, for example, reject the modern trend towards sex equality. Such religions are “typically highly patriarchal, [and] they advocate and practice the dependency and submissiveness of women” (Okin 1994, 31). Parents who hold patriarchal religious doctrines often see themselves as having a religious duty to raise their children in accordance with their religious values, even if this means exposing them to sex discrimination and teaching them that sex constitutes a legitimate basis for basic inequalities (32).

Growing up in a patriarchal, gender-structured household may cause some young girls to view themselves as inferior persons, members of a lower caste whose primary responsibility in life is to appease men, get married, have children and serve their husbands. This conditioning may cause a girl to experience moral and psychological harm that will affect her ability to form, revise and pursue a conception of *her* good. It may also skew her sense of justice with patriarchal bias, and may prevent her from fully developing the two moral powers. This in turn would prevent her from viewing herself as a free and equal citizen, and fully exercising her political agency. She may consider her only feasible option a life of unpaid domestic labor: a role in which she could not fully exercise the options available to free and equal citizens. In light of these adverse effects on the development of moral and political attitudes in women, Rawls’s principles of justice clearly require the state to intervene in the internal affairs of the family and prohibit the religious indoctrination of ideas that conflict with sex equality.

### 5.2. Does Religious Education Entail Indoctrination?

One might object that parents who impart their reasonable religious beliefs to their young daughter do not necessarily indoctrinate her. If parents can impart their reasonable religious

beliefs to their children without indoctrinating them, then young girls who are inculcated with illiberal religious beliefs may have the ability to revise them. One could justifiably argue that upon revising their religiously instilled beliefs, women will claim the fair value of their political liberties and function effectively as democratic citizens. Such an argument would defuse the tension in the first principle by refuting the vital assumption that certain religious beliefs—either by virtue of their content or their method of inculcation—are not subject to revision.

This objection rests on the claim that it is logically possible<sup>28</sup> to impart religious beliefs to young children without indoctrinating them. Michael Hand raises this point in “Religious Upbringing Reconsidered,” where he argues that it is logically possible for parents to impart religious beliefs to their young children without indoctrinating them because their children regard them as “intellectual authorities” (Hand 2002, 551). Hand defines “indoctrination” as the process where one person (X) imparts a belief to another person (Y) by exerting psychological pressure on her, thereby bypassing her reason (549). He contrasts this with “proving” the truth of a belief, which requires that X appeal to Y’s reason. Hand argues that while it is clear that any method of imparting beliefs either appeals to or bypasses a person’s reason, it is not as clear that the only way to impart a belief through a person’s reason is by proving it to her (550). Another way of imparting beliefs by appealing to a person’s reason, Hand thinks, is by “*the exercise of perceived intellectual authority*” (551). “Other things being equal,” he states, “when a person perceived by others to be an intellectual authority asserts that a proposition is true, she places them under a [prima facie] *rational obligation* to accept her assertion” (ibid, italics added).

Hand then explains how this alternative method of imparting beliefs characterizes the way that parents inculcate beliefs in their children: “insofar as a parent is perceived by her

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<sup>28</sup> The claim that imparting religious beliefs to young children without indoctrinating them is logically possible entails that it is also psychologically possible to do so.

children to be an intellectual authority on religious matters, she is in a position to impart religious beliefs to them by appealing to their reason” (Hand 2002, 552). It is not a decisive criticism of this argument, Hand thinks, to point out that the parent must first indoctrinate her child with the belief that she is an intellectual authority, since all that is necessary is that the parent be *perceived* as one. Hand notes that parents do not need to indoctrinate their children with the belief that they are intellectual authorities on religion because it already exists. As he puts it, “young children, as a matter of psychological fact, tend to regard their parents as intellectual authorities on everything under the sun” (ibid). He maintains that this fact enables a person (X) who is perceived as an intellectual authority by another person (Y) to impart beliefs to Y in a manner that does not result in the indoctrination of Y.

I believe that the objection that parents who impart their reasonable religious beliefs to their young daughter do not necessarily indoctrinate her fails for three reasons. First, Hand’s argument for the logical possibility of religious education without indoctrination is unsound. It relies on the faulty premise that a child’s belief that her parents are intellectual authorities does not need to be rationally held. Hand points out that such a belief may be an “entirely non-rational symptom of her need for a reliable guide to the strange and terrifying world in which she finds herself,” and he later insists that this belief may arise as an emotional need. Still, he argues, all that is relevant to her parents’ imparting their beliefs to her is that her belief in their authority “arises naturally” (Hand 2002, 552). I find Hand’s claim that people need to procure beliefs rationally to avoid indoctrination to be inconsistent with his claim that the basis for accepting beliefs does not have to be rationally acquired. To be justified in regarding someone as an intellectual authority requires not only that one believe in the infallibility of the knowledge of the authority, but also that one has a sound basis in reason for having this belief.

For example, a townspeople, Nicole, would not regard Jim, the town drunk, as an intellectual authority on Baroque art simply because he professed to studying Caravaggio in college. Suppose that Nicole suffered from acute trauma to the head during a snowstorm and Jim nursed her to health. If Nicole's semi-conscious moments were filled with Jim's drunken musings about the *Amor Vincit Omnia*, and she woke to find herself believing that Jim was an intellectual authority on Baroque art, would we say that she rationally holds beliefs Jim imparts to her? I think we would not, citing her temporary psychological vulnerability as an unsound basis for regarding Jim as an intellectual authority. I believe the same holds for young children: their emotional need to perceive their parents as intellectual authorities does not involve rational reflection, only a psychological vulnerability stemming from their intellectual immaturity.

Second, I find that this objection completely misses the point of my argument. Even if it were possible for religious education to occur without indoctrination, many reasonable religions under Rawls's definition indoctrinate *as a matter of principle*. Many Baptist ministers preach hellfire and damnation to their congregations; Hijab dress is rigorously observed among some Muslim women; and Roman Catholics must receive Communion in order to be saved through Christ. Children gain exposure to these psychologically coercive practices through their parents, and whether such exposure constitutes indoctrination depends on the degree of exposure and the psychological impact exerted on the child's mind. Claiming that parents may religiously educate their children without indoctrination is not enough to satisfy the demands of justice as fairness. What justice as fairness demands is that no child is indoctrinated with religious views that compromise her ability to develop into a citizen capable of exercising the two moral powers.

### 5.3. *Tan's Response*

The third reason that Hand's argument fails is that it does not recognize that the inculcation of non-rational beliefs in children is necessary for the development of their intellectual faculties. Charlene Tan addresses this point in a response to Hand's article in which she *defends* the inculcation of non-rational beliefs in children as necessary for their intellectual maturation, denies that such inculcation is necessarily indoctrinatory, and supports the religious education of children on these grounds.<sup>29</sup> Tan charges Hand with confusing the inculcation of non-rational beliefs with indoctrination, which she understands as the inculcation of beliefs that are, either by virtue of the means of their inculcation or their very nature, not open to revision. She asserts that, on Hand's account, "holding to beliefs non-rationally does not just refer to the absence of evidence for one's beliefs; it also entails that the beliefs are impervious to change and are unshakeable" (Tan 2004a, 258).

Given that religious beliefs cannot be imparted with decisive evidence, it follows that if we accept Hand's definition of "indoctrination" as the mere inculcation of beliefs so that they are held non-rationally, then it is logically impossible to teach children religious beliefs without indoctrinating them. However, this notion of indoctrination is problematic because it rests on an untenable link between rationally acquired beliefs and empirically derived evidence. As Tan notes, the search for pure evidence "would only lead to an infinite regress" (Tan 2004a, 259). Others, such as Peter van Inwagen, have claimed that such an incessant search would only lead to skepticism or agnosticism with regard to "most philosophical and political questions" (*ibid.*). Tan goes on to claim that many of the basic beliefs that we hold are not evidentially grounded nor open to change when challenged.

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<sup>29</sup> See her article, "Michael Hand, Indoctrination and the Inculcation of Belief" (2004).

As an example of an evidentially ungrounded belief, Tan cites the reliability of our senses. She points out the epistemic circularity that undermines rational justification for this belief—namely, that any appeal to evidence begs the question since we must rely on sensory experience for verification (Tan 2004a, 259). Citing both Bartley and Popper’s strong critique of comprehensive rationalism, she concludes that what we refer to as evidence rests on the particular belief system that we adopt (ibid). If we accept this conclusion, then Hand’s crucial assumption—that all methods of inculcating beliefs that do not rely on “pure evidence” are indoctrinatory—appears deeply flawed. To accept this assumption in light of Tan’s assertion that none of our beliefs are “rationally grounded” outside of the ideological framework that we adopt seems to entail the absurd conclusion that we acquire all of our beliefs via indoctrination.

Tan then criticizes Hand’s account of indoctrination for resting on the faulty presupposition that “an indoctrinated person cannot return to the evidence and rethink her beliefs at a later stage” (Tan 2004a, 260). This notion of indoctrination—as a process whereby certain beliefs become unshakeable—appears in McLaughlin, who distinguishes between a strong and a weak sense of fixed beliefs (ibid.). Regarding this distinction Tan states:

...[In] the [strong sense], the beliefs are fixed because they are ‘so pervasively and thoroughly established that nothing can shake them...[whereas] in contrast, the weak sense of fixed beliefs is found in beliefs that are stable but open to subsequent challenge and change. (260)

McLaughlin considers fixed beliefs of the strong sort as indicative of the indoctrinated state of mind that we ought to eschew; by contrast he regards the formation of the weak sort of fixed beliefs as part of the process of providing children, who belong to a particular comprehensive doctrine, with a coherent worldview. But Tan rejects this distinction for two reasons. First, she notes the fact that we often consider certain individuals as indoctrinated with beliefs that they are



able to revise in light of new evidence. Second, she claims that neither Hand nor McLaughlin offer a definition of indoctrination that takes into account this fact (ibid.).

If we allow Hand these few missteps and acknowledge that his faulty assumptions are not fatal to his conclusion, what are we to make of his assertion that the logical problem remains even if we drop the notion of “indoctrination” as he conceives it? Here we may recall that on Hand’s account of indoctrination, the idea of imparting religious beliefs to children without indoctrination remains logically problematic if parents may have both the right to give their children a religious upbringing and the duty to avoid imparting to them non-rationally held beliefs. But as Tan asserts, “do parents really have the duty to avoid imparting beliefs that are not rationally grounded?” (Tan 2004a, 261). Setting aside the conclusion drawn by Peter Gardner and Jim Mackenzie that some non-rational beliefs are acceptable, Tan goes so far as to claim that the inculcation of non-rational beliefs is not merely inevitable, but “*essential* for children to make sense of the world around them” (ibid.).

This ostensibly radical claim finds its basis in Ludwig Wittgenstein’s understanding of belief acquisition as presented in *On Certainty*. In support of her claim, Tan cites a passage where Wittgenstein asserts, “we do not learn the practice of making empirical judgments by learning rules...[but rather] are taught judgments and their connection with other judgments” (Tan 2004a, 261). She then references Wittgenstein as claiming that children do not receive their “world-picture”<sup>30</sup> because they satisfy themselves of its correctness, but instead because they *inherit* it as a background against which to distinguish between true and false (ibid.). For Tan,

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<sup>30</sup> Tan understands Wittgenstein as defining the world-picture as the “substratum of all our inquiring and asserting,” and hence, the “platform of pre-rational training” (261).

these few passages from *On Certainty* demonstrate that children must be initiated into a world-picture, and that this initiation requires a non-rational method of belief inculcation (ibid.).<sup>31</sup>

What becomes of the commonly held distinction between indoctrination as a process of inculcating non-rational beliefs necessary for children's development into beings endowed with a worldview that allows them to make sense of the world, and "indoctrination" as understood in the injurious sense of the word? Is all education necessarily indoctrinatory? Tan thinks that this is the case if we hold on to the current notion of indoctrination. What we need, she believes, is to redefine "indoctrination" so as to distinguish it from the mere inculcation of beliefs. Tan proposes that we should understand indoctrination as the "paralysis of one's mind, both in form and substance" (Tan 2004a, 264). Hence, for a parent to indoctrinate their child, either the form of the beliefs or the process of inculcating them must paralyze the child's mind (ibid.). On this basis Tan concludes that although parents have the duty to ensure that they do not mentally paralyze their child in teaching her their religious beliefs, the difficulty of imparting religious beliefs to a child without indoctrinating her is *practical*, not *logical* (ibid.).

I believe that Tan refutes Hand's argument by showing that he fails to realize that imparting beliefs to children in such a way that are not rationally held is necessary for their intellectual development. But does her assertion that parents have the duty to impart such beliefs to their children—provided that they do not "paralyze" their child's mind—demonstrate that parents holding religious beliefs at odds with sex equality should have the right to inculcate their

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<sup>31</sup> The idea that children must receive some form of initial worldview in order to make sense of the world has gained broad acceptance and not simply among Wittgensteinians. Tan cites Bruce Ackerman and Peter Hobson as two who endorse the idea of a "primary culture" (262). For Ackerman, the idea of a primary culture amounts to a background of "cultural coherence" that enables individuals to develop their own views (ibid.). According to Ackerman, children receive this background from their parents, and from the cultural community in which they are raised. If a consistent background is not present from the early stages of childhood onward, then a child will fail to develop a coherent worldview. Likewise, Hobson maintains that children need to start off with a "stable framework of reference or set of standards to guide them in regard to important decisions that have to be made as they grow toward maturity" (ibid.).

child with these beliefs? This argument rests tenuously on the assumption that no religious beliefs are in practice unalterable. Only with this assumption intact could one argue that the inculcation of religious beliefs does not necessarily violate the requirement of sex equality in justice as fairness. I believe that this assumption fails for two reasons.

First, Tan appears to ignore the importance of the content of religious beliefs. Her acknowledgement that over-zealous parents could potentially indoctrinate<sup>32</sup> their child may bring to mind the image of fundamentalist parents dogmatically ingraining their religious beliefs into their children with the fear of hellfire and eternal damnation. Yet it does not logically follow from this generalization that *all* parents who instill their illiberal religious beliefs into their children must do so with such fervor. Also, the assertion that the method of inculcating beliefs may be indoctrinatory if it is sufficiently coercive is rather uninteresting. It is uncontroversial that a socialization that amounts to brainwashing will ensure that the subject will conceive all of her projects within the instilled framework (Benn 257).<sup>33</sup>

However, this does not make irrelevant the fact that the *content* of religious beliefs and the *intensity* with which they are held may preclude their revision once instilled. Tan suggests that neither Hand nor McLaughlin offer a definition of indoctrination that takes into account the fact that we often consider certain individuals as indoctrinated with beliefs that they are able to revise. But Tan offers the exact conception of indoctrination that is required to dismiss this attack. If we accept her definition of indoctrination as the paralysis of the mind in form and substance, then we may quickly dismiss the notion of an individual who is able to revise the beliefs with which she is indoctrinated. What becomes relevant, then, is whether the type of

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<sup>32</sup> Here, Tan uses "indoctrination" in the revised sense that she proposes in her paper.

<sup>33</sup> For more on non-volitional coercion and the problem of educating children in a non-coercive manner, and the notion of freedom as *autarchy*, see Stanley Benn, *A Theory of Freedom* (Cambridge: Cambridge University Press, 1988). See especially chapters 8, 9 and 13. Also consider Alan Wertheimer, *Coercion* (Princeton: Princeton University Press, 1987), 187, example 8.

belief inculcated causes mental paralysis. My point here is simply that parents who *successfully* inculcate their children with beliefs concerning the appropriateness of certain actions or behaviors<sup>34</sup> as determined by their object of worship—be it an idol or an almighty transcendent god—in effect place those beliefs, damaging as they may be in character to the child's development into a moral citizen, beyond the scope of that child's rational faculties.

That fundamentalist parents who *successfully* instill hierarchical gender roles into the belief set of their child do so dogmatically is irrelevant here. Of greater importance to Rawls's project is the fact that certain beliefs, by their very nature, may be unshakeable if inculcated *successfully*. If fundamentalist parents who do not coerce their child into adopting a set of beliefs cannot rely on the nature of the beliefs themselves to create a permanent impression on their child, then such beliefs are in theory and likely in practice fully revisable. What is salient is the way in which the child holds the inculcated beliefs. For example, if a child comes to believe that her god attaches divine significance to her occupation of a distinctly female sphere—which, if she chooses to marry, might require that she behave subserviently with respect to her husband—then such a belief reinforces itself. The *content* of religious beliefs and the *intensity* with which an individual holds them suggests that they may lend themselves to indoctrination.

Second, Tan claims that there is only a *practical* difficulty in avoiding indoctrination. That this difficulty is practical rather than logical in nature suggests the possibility that parents may inculcate beliefs into their child that are not rationally held without indoctrinating them in Tan's sense. Still, it is possible that a child inculcated with beliefs that bypass her reason will be indoctrinated in Tan's sense, depending on the intensity with which the child holds onto the

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<sup>34</sup> For example, a parent attempting to instill the notion of an appropriate gender role into his daughter might say to her, "God wants little girls to dress in such a way and to behave in such a way." Reinforcing this claim would be the girl's belief that if she did not dress a certain way or conduct herself a certain way (i.e. failure to maintain sexual chastity or failure to act 'ladylike') then her god would view her unfavorably.

inculcated beliefs. Toward the conclusion of her argument, Tan focuses—too narrowly—on the precautions that parents must take in order to avoid indoctrinating their children, and does not address the possibility that a child may have a psychological propensity to adopt certain beliefs instead of others, including ones that may paralyze the mind.

As I noted in my criticism of Hand's argument, the mere possibility that parents may avoid indoctrinating their children does not meet the requirements of Rawlsian liberalism. Justice as fairness requires that no individual lack the ability to develop into a citizen with the two moral powers. If exposure in the home to traditionalist religious beliefs causes a female child to adopt them and define her proper role in life according to their patriarchal elements,<sup>35</sup> then exposure to such beliefs may jeopardize her ability to develop into a citizen with fully developed moral powers and thereby compromise her political equality.<sup>36</sup> Tan's argument does not appear to support the conclusion that parents may freely inculcate their children with *just any* comprehensive beliefs so long as they do not do so in a coercive manner. For instance, Tan does not address the fact that parents who do not physically coerce their children into espousing their religious beliefs may nevertheless indoctrinate them with these beliefs. In light of this possibility, her argument does not suggest that the tension plaguing Rawls's conception of justice is merely chimerical. Is it the case that Rawlsian political liberalism is a doomed conception? Perhaps, although some would argue that Rawls's proposal of mandatory civic education allows him to avoid the tension within justice as fairness. It is to this subject that I now turn.

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<sup>35</sup> Provided of course that patriarchal elements mark the beliefs associated with this particular religious doctrine.

<sup>36</sup> An important assumption underlying my account is that the cultivation of a particular political attitude necessary for functioning as a citizen in Rawls's politically liberal society goes hand in hand with an individual having "fully developed moral powers." I believe that the necessity of this attitude can be supported under the requirement that individuals develop an effective sense of justice, since this moral power compels individuals to act in accordance with the public conception of justice: in Rawls's view, justice as fairness.

#### 5.4. Rawlsian Civic Education

Seeing as the problem in Rawls's theory is not chimerical, ought we to conclude that his just society requires the law to intervene in the affairs of the family? Accepting this conclusion seems problematic in itself, since Rawls would find it much too intrusive and destabilizing for the law to determine which parents should be able to raise their children in accordance with their comprehensive doctrines, and which should not. An ostensible solution to this problem is the requirement of civic education he mentions in *Political Liberalism*. Okin notes the potential of this idea, stating that "it could to some extent counteract the isolation some religious groups now succeed in maintaining for their children...and could act as a counterforce against certain elements of comprehensive doctrines, such as gender inequality" (Okin 1994, 32). However, she quickly dismisses this idea as a solution for the problem of religious indoctrination, since it seems "highly dubious" that civic education could completely reverse the effects of children's early childhood experiences in the home (ibid).

I believe that Okin is correct in dismissing this solution. In *Theory* Rawls advances a plausible account of moral development beginning with the family. He claims that the family plays a formative role in the development of our two moral powers, including our sense of justice. I find this account of moral development far more convincing than the one that Rawls presents in *Political Liberalism* and maintains throughout his later works. In *Political Liberalism* Rawls states that moral development mainly takes place within the political culture, and he makes no mention of the role of the family in the moral development of children. Since people encounter the political culture "mainly as adults, and, in many cases, indirectly and sporadically even then," Rawls's account of moral development in *Political Liberalism* appears plainly false (Okin 1994, 35). We should therefore reject Rawls's later notion of moral

development and judge his theory in light of the one he propounds in *Theory*. In light of certain facts of human psychology that we would find difficult to deny—in particular the deference young children pay to their parents' authority—it appears dubious that the type of liberal civic education that Rawls proposes could undo the attitudes and behaviors learned in early childhood.

One might ask, “Why is it the case that Rawlsian civic education could not undo certain *fundamental* attitudes learned in childhood?” A simple answer is that throughout his later works Rawls supports the idea that political and judicial institutions largely perform the task of civic education. In the *Restatement* he claims, “Those who grow up in [a just society] will in good part form their conception of themselves as citizens from the public political culture and from the conceptions of the person and society implicit in it” (146). But one of the main problems with Rawls's account of moral development in *Political Liberalism* is that he fails to acknowledge that citizens have sporadic and indirect contact with political and judicial institutions. In light of this fact about political life, we may reasonably conclude that in general citizens will not acquire the civic education that Rawls proposes from political and judicial institutions.

In response one might note that Rawls's position on the civic education of children suggests the use of school programs to foster their development as future citizens. The salient question now is, “If Rawlsian civic education were implemented as a school program, could it resolve the tension in Rawls's theory?” It seems apparent to me that if Rawls were to recommend a formal educational program, its very content and form would bar it from offering a solution to the tension in his theory.<sup>37</sup> Rawlsian civic education has to satisfy the demands of *justificatory neutrality*, and therefore could not possibly serve as an effective counterforce to

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<sup>37</sup> Let us recall that this tension stems from Rawls's implicit support of the right of parents to hold illiberal religious beliefs that conflict with the demands of sex equality, and teach these beliefs to their children.

religious indoctrination.<sup>38</sup> Justificatory neutrality requires that the government justify its laws and political arrangements by “appealing to grounds or values that are neutral with respect to controversial views of the good” (Steutel 373). In order to satisfy this criterion of neutrality, a state mandated form of civic education would have to walk a tightrope suspended between the need to give considerable emphasis to the weight of shared political aims, and the need to avoid commentary on wider moral and religious claims (Macedo, 1995, 476). Thus, political liberalism would only support a form of civic education that promotes the shared political aims of a liberal democracy without disparaging traditionalist religious views.

A number of thinkers have criticized the idea of a Rawlsian civic education program for having to walk this narrow path. This group holds that Rawls’s just society requires a more demanding civic education than what is advanced by and compatible with political liberalism. Even those who believe that such criticisms are somewhat misguided admit that a “richer conception” of civic education is required for Rawls’s just society (2). M. Victoria Costa acknowledges that the type of justificatory neutrality that the laws and policies advanced by Rawls’s just society must satisfy does not entail the exclusion of all moral values. This could not be the case, since the basis of his just society rests on *political-moral* values such as the idea of free and equal citizens (4). Rather, the state should abstain from basing its decisions on grounds that some citizens could *reasonably* reject (ibid.).

While a mandatory school program of Rawlsian civic education would inform all citizens of their rights *qua* citizens, some citizens could reasonably reject the policy of teaching liberal political beliefs as *true* beliefs. For example, a citizen’s civic education would inform them that they have certain constitutionally guaranteed rights and liberties, and that religious apostasy—

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<sup>38</sup> For a helpful discussion about the different forms of justificatory neutrality and the particular form that best characterizes the one described in Rawls’s theory see M. Victoria Costa, “Rawlsian Civic Education: Political not Minimal” (*Journal of Applied Philosophy* 21, 2004).



which may constitute grounds for expulsion from one's religious sect—is not a legal crime.<sup>39</sup> But Rawlsian civic education could not, for example, assert that patriarchal religious beliefs are *wrong* or *false*; it could only inform students that such beliefs do not coincide with the requirements of justice in a liberal constitutional democracy. Are we really to believe that a form of civic education that takes the position of “liberal silence”<sup>40</sup> could undermine indoctrinated or even deeply held religious beliefs?

It does not seem plausible that a liberal civic education that aims to remain silent about “the existence of controversies about the good” could have the reformative effect necessary to ensure that individuals are not burdened by patriarchal religious beliefs (Costa 8). Rawlsian civic education aims to promote toleration, which may include *teaching about* a wide range of comprehensive views. By contrast, religious instruction aims to *teach* a particular comprehensive view. The distinction between “teaching” and “teaching about” is an important one. “Teaching” or the inculcation of belief does not merely introduce a person to a particular set of beliefs, but aims to instill in that person those very beliefs. “Teaching about” does not require that the subject of instruction internalize the beliefs introduced to her, but only that she gains awareness of their existence. How could we expect a method of instruction that does not instill beliefs in its subjects to overturn beliefs firmly entrenched by religious teaching?

Perhaps I am mistaken about the reformative power of Rawlsian civic education. It could be that the mere exposure to alternative viewpoints enables individuals to reflect on and revise any of their comprehensive views that do not square with the political values of a just democratic society. Perhaps those individuals whose imaginations have not been fully immobilized by their

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<sup>39</sup> Rawls asserts that the civic education of children should “prepare them to be fully cooperating members of society and enable them to be self-supporting; [and that] it should also encourage the political virtues so that they want to honor the fair terms of social cooperation in their relations with the rest of society” (Rawls 2001 156-157).

<sup>40</sup> The concept of “liberal silence” refers to the stance of formal neutrality that state institutions must assume toward different, conflicting conceptions of the good.

set of comprehensive beliefs will have the opportunity to revise their conception of the good. And perhaps these individuals in turn will amass in such numbers as to generate social pressure to conform on members of traditionalist sects. Yet even if this were the case, civic education would not satisfy the requirement that all citizens develop into fully cooperating, self-supporting members of society, because it cannot *guarantee* that all citizens have the power to revise their beliefs. Setting empirical claims aside, how could the mere exposure to alternative comprehensive views with an emphasis on toleration so much as nick the imagination of fully indoctrinated individuals: citizens whose imaginations have been closed off to alternative systems of belief? Rawlsian civic education could not guarantee that citizens are able to revise their beliefs, nor could it ensure that all persons develop into the sort of citizens essential to the survival of a liberal democracy guided by the principles of justice. In light of the strict demands of Rawlsian justice, we may conclude that the type of mandatory civic education that he proposes cannot possibly resolve the central tension in his theory.<sup>41</sup>

##### *5.5. Religious Primacy and Political Stability*

Would prohibiting parents from indoctrinating their young children with religious doctrines that promote sex inequality undermine religion's primacy in the background culture and compromise the stability of a constitutional democracy? Consider the requirement in political liberalism that all children receive an education that prepares them "to be fully cooperating members of society" and encourages "the political virtues so that they want to honor the fair terms of social cooperation in their relations with the rest of society" (Rawls 2001, 156). Rawls accepts that this

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<sup>41</sup> For a further criticism of Rawlsian civic education on the basis that it must incorporate elements of a liberal conception of the good, see Mulhall, "Political Liberalism and Civic Education: The Liberal State and its Future Citizens" (*Journal of Philosophy of Education* 32, 1998).

requirement may come into conflict with the doctrines of religious sects<sup>42</sup> that oppose the culture of the modern world:

Justice as fairness honors, as far as it can, the claims of those who wish to withdraw from the modern world in accordance with the injunctions of their religion, provided only that they acknowledge the principles of the political conception of justice and appreciate its political ideals of person and society. (156-157)

Although mandatory civic education may conflict with the beliefs of certain reasonable religious sects, I do not believe that this requirement disrespects or undermines religious life *within* the family.<sup>43</sup> Provided that reasonable religious sects are granted dominion over the affairs within their core nonpolitical associations—such as the church and the family—civic education does not appear a *major* threat to the stability of a well-ordered society.

For many parents, however, raising children in a way to ensure their religious indoctrination constitutes a fundamental religious duty<sup>44</sup>. Denying these parents the right to raise their children in accordance with their religious values violates the first principle of justice, which protects religious freedom in the background culture. Can a political conception of justice that prohibits many parents from fulfilling a fundamental religious duty gain broad acceptance in a democratic society? Although I cannot provide a definitive answer to this question, it seems plausible to conclude that achieving full sex equality will require laws that at best can gain only a weak and narrow public basis for justification. If reasonable citizens feel disrespected, that their rights and liberties are being compromised, or that the shared political values fail to justify laws that unreasonably compromise their religious freedom, then political instability may result. This

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<sup>42</sup> The Amish are an example of a religious sect that opposes modern culture and mandatory public education.

<sup>43</sup> Although mandatory civic education may conflict with traditionalist religious beliefs, it seems possible that members of these sects might accept this requirement of a liberal democratic society. However, it seems ridiculous to think that these members could accept state control over parenting.

<sup>44</sup> See Ephesians 5:22. Many children of Christian parents are baptized at a very young age and are raised in households that promote sex roles, women's chastity, and female subservience as a matter of religious principle.

suggests that Rawls's theory faces a serious problem: namely, since there is no guarantee of stability in a society underwritten by justice as fairness, political liberalism appears unrealizable.

### 5.6. *Three Options*

Can Rawls resolve the conflict in the demands of political liberalism? He appears to have three options. First, he may assert that the state cannot prohibit the religious indoctrination of young children within the home, but may instead seek to counter the effects of indoctrination through civic education. Second, he may argue that laws must prohibit parents from exposing their child to their religious doctrine until she has the ability to reason effectively. Third, he may assert that all comprehensive doctrines that conflict with sex equality are unreasonable on the grounds that they are incompatible with the aims of justice as fairness, and bar anyone holding those doctrines from engaging in the political forum or benefiting from state institutions.

We have already considered the first option and rejected it because mandatory civic education cannot *ensure* that indoctrinated children, especially young girls, develop into full citizens. We have seen in our discussion of Rawlsian civic education that it lacks the necessary force to overthrow deeply entrenched illiberal beliefs. Even if some children who go through a civic education program successfully overturn beliefs that are incompatible with justice as fairness, there is no guarantee that such an educational program could ensure that *all* citizens develop their two moral powers in such a way that they can regard themselves as free and equal citizens. Any acceptable resolution to the tension in the aims of justice as fairness must meet two criteria: first, it must be able to overturn indoctrinated beliefs and second, it must be able to do so for all citizens who are indoctrinated with beliefs at odds with justice as fairness. Rawlsian civic education satisfies neither of these criteria.

I feel that the second and third options are also unsatisfactory. Neither could resolve the tension in Rawls's theory because both would compromise the stability of a democratic society. The ubiquity of reasonable religious doctrines incompatible with sex equality means that the third option would essentially destroy the overlapping consensus that Rawls's just society needs in order to be stable for the right reasons.<sup>45</sup> As for the second option, one might ask: "Why not determine when children can reason effectively and at that age allow parents to expose them to their religion?" The obvious difficulty with this solution is that it requires a test to determine when a child can reason effectively. There is no litmus test for reason, and I fail to see how philosophical debate could produce a satisfying answer.

Aside from the practical difficulties of determining the age at which a person can reason, the second option does not address the deeper problem of parents wishing to raise their children how they see fit, and *when* they see fit. It is fair to assume that most parents feel that they should have the latitude to raise their children according to how they see fit within reasonable constraints. As this desideratum undoubtedly extends to parents who wish to expose their child to religion as early as infancy, setting age limits on this exposure means denying some parents the right to parental autonomy. Undercutting parental autonomy in this way would produce destabilizing effects in a liberal democracy because undermining religious freedom—and hence, the freedom to raise one's children in accordance with one's own reasonable doctrine—constitutes a violation of a freedom protected under Rawls's conception of justice.

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<sup>45</sup> One might contend that it is possible for there to exist a society without patriarchal religions, and that option three would save Rawls's theory from my argument. I shall address this particular objection in the following section (§6).

## §6. Rawlsian Objections<sup>46</sup>

One might contend that I cannot justifiably claim to have demonstrated that Rawls's political liberalism is unrealizable because my argument has not withstood any objections that, if true, would completely undermine my conclusion. I shall now lay this contention to rest. Two salient objections to my argument come to mind, both of which stem from within Rawls's theory. I will first address the charge that perfect compliance with the demands of justice as fairness is unrealistic, and that by focusing exclusively on the problem of stability in an ideally just society my argument demands too much of political liberalism. I will then address the more potent charge that political liberalism is at least in theory realizable because the conditions of a well-ordered society would eventually compel traditionalist religions to liberalize and reject all patriarchal beliefs. I shall conclude that neither of these objections poses a real threat to my argument, and that political liberalism remains an unrealistically utopian conception.

### 6.1. *Partial Compliance Theory is No Panacea*

One might raise the objection that my argument against political liberalism demands too much. Although I contend that political liberalism is incompatible with a perfectly just society, my objector might suggest that Rawls would be satisfied with working *towards* perfect justice. It is not appropriate, this objector might add, that I judge Rawls's theory in light of the demands of *strict compliance* with justice. Since it is difficult to conceive of a perfectly just society and perhaps impossible in practice to implement one, he might suggest that I should evaluate the viability of Rawlsian political liberalism in light of *partial compliance theory*. Surely we would

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<sup>46</sup> I would like to thank W. Lad Sessions for bringing these pertinent objections to my attention.

agree that in discussing matters of justice one has to start somewhere; but why must one start at a society marked by ideal justice?

Amartya Sen raises this point in “What Do We Want from a Theory of Justice?” In this article Sen identifies two approaches to determining what constitutes a just society. He calls the first a “transcendental” approach to justice, and the second a “comparative” approach (216). According to Sen, a transcendental approach concentrates on identifying perfectly just social arrangements (*ibid.*). In contrast, a comparative approach focuses on “ranking alternative social arrangements...rather than focusing exclusively—or at all—on the identification of a fully just society” (*ibid.*). On a transcendental theory of justice there exists a grand partition between justness and unjustness, one that would persist even in light of what would be viewed as a “justice-enhancing change” from a comparative theory (217). The main problem with a transcendental theory of justice is that it has no way of comparing alternative proposals for having a more just society, which means that it “cannot, on its own, address questions about advancing justice” (218). This problem stems from its strict demarcation criterion, which holds that a society is either just or not just. Given that its all-or-nothing approach does not leave room for the type of concerns that actually engage people in discussions of justice,<sup>47</sup> Sen believes that a transcendental theory of justice is trivial (*ibid.*).

I shall not take up the remainder of Sen’s argument—which aims to reject the claim that comparative conclusions of justice either follow from or require a transcendental theory—save to say that he believes that a transcendental theory of justice would have certain institutional preconditions that could not be met in the foreseeable future (226). If true, this assertion seems to have grave consequences for political liberalism, for Sen observes that Rawls’s theory of

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<sup>47</sup> Sen notes that “iniquities of hunger, illiteracy, torture, arbitrary incarceration, [and] medical exclusion” are among the concerns that actually engage people in discussions on justice, and that these discussions typically center on how to advance justice, rather than on defining whether the society in question is “just” (218).

justice is of a transcendental form that rests on public reason (228). Although Sen maintains that a public framework of thought should not become “wholly inoperative because the institutional demands of a perfectly just society have turned out to be infeasible,” he asserts that there does not *appear* to be a provision in Rawls’s theory for the use of public reason to address comparative claims.

But perhaps such a provision does exist in Rawls’s theory. Consider his discussion of *partial compliance theory* in sections 38 and 39 of *Theory*. Here Rawls notes that although his main concern is to explicate an *ideal theory* of justice, it is still important to consider how justice requires us to meet injustice (Rawls 1999a, 216-217). Rawls describes the latter subject as concerning problems of partial compliance under *nonideal theory* and he goes on to explain that the central purpose of this theory is to define an appropriate system of sanctions that can be enforced by a coercive state agency (211-213). In his view, the limitations upon liberty created by coercive state sanctions are “for the sake of liberty itself” (217). Namely, these sanctions function to remove injustices, “beginning with the most grievous as identified by the extent of the deviation from perfect justice” (216).

Setting aside Sen’s powerful objection that it is theoretically *impossible*<sup>48</sup> to gauge how far a nonideal state of affairs deviates from perfect justice, how would focusing on partial compliance theory save political liberalism from its internal tension? Upon close examination one should find that there is no hidden hope for political liberalism in Rawls’s discussion on nonideal theory: it should become clear that partial compliance theory is no panacea. Consider three statements Rawls makes with regard to unequal liberty: (a) that in some historical cases unequal political liberty may have been justified; (b) that it may be necessary for individuals to

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<sup>48</sup> For a detailed explanation as to why this is theoretically impossible, see Amartya Sen, “What Do We Want from a Theory of Justice?” (*The Journal of Philosophy* 103, 2006, pp. 19-28).



forgo some of their constitutionally guaranteed freedoms when this is required to transform a less fortunate society into one in which all the basic liberties can be fully enjoyed; and (c) that in the case that individuals have to forgo some of their freedoms, the more central ones should be realized first (Rawls 1999a, 217).

These statements would be unproblematic for Rawls's if not for his insistence that the equal political liberties are less privileged than "liberty of conscience and the rights defining the integrity of the person" (Rawls 1999a, 217). In effect, this claim leads to the conclusion that a state should not interfere with the religious education of children within the home even if it involves the indoctrination of patriarchal beliefs in a young girl, since this would compromise the parents' liberty of conscience in order to uphold the daughter's political liberties. If Rawls's claim that the equal political liberties are less privileged than liberty of conscience were true, it would create an exemption for sex inequality in nonideal theory and flatten my argument against political liberalism. But accepting the truth of this claim would be a serious mistake, as it would mean ignoring Rawls's extensive discussion in *Political Liberalism* and throughout his later works on how the equal political liberties form the basis of self-respect (Rawls 1993, 318; Rawls 1999a, 477-478). If a policy designed to protect a parent's liberty of conscience to raise his daughter in accordance with his patriarchal religious beliefs compromises her political liberties as a future citizen, then it will consequently undermine her basis of self respect.

*How is it possible to protect the integrity of an individual while eroding her bases of self-respect?* Careful analysis of Rawls's account will show that one cannot uphold the integrity of an individual and tear down the foundation of her self-respect. This is theoretically impossible on Rawls's account given his focus on self-respect as the most important primary good: the one that motivates our agency, instills value into our projects, shields us from apathy and cynicism,

and generally makes life worth living (Rawls 1999a, 386). Because Rawls's partial compliance theory cannot avoid the problem of the family in nonideal circumstances, I am convinced that any appeal to nonideal theory in an effort to undermine my argument will inevitably fail.<sup>49</sup>

Hence, the objection that viewing political liberalism in light of partial compliance theory will save Rawls's theory is as deeply flawed as his conception of liberalism.

### *6.2. Liberalization and Justice for All?*

A second major objection that one might level against my argument concerns the ability of an illiberal comprehensive doctrine to liberalize and join the reasonable overlapping consensus in a liberal democratic society. Such an objector might begin by conceding that political liberalism might not be possible in any society at present. He might also concede that many of the doctrines that Rawls considers reasonable are in fact unreasonable under his theory of justice. But he would then assert that illiberal doctrines would have to liberalize in order to survive under the conditions of a liberal democratic society. In the process of liberalization these sects would come to reject all beliefs incompatible with justice, such as ones glorifying patriarchy. In addition, this gradual evolution would enable newly liberalized sects to survive under the conditions of a liberal democracy, while social forces would eventually cull away any sects that resist liberalization. Such an objection might conclude that while political liberalism is not realizable at present, this does not mean that it is unrealistically utopian, since future conditions could be favorable to Rawls's aim of outlining a theory of justice for a stable liberal democracy.

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<sup>49</sup> Another objection to those who seek refuge in partial compliance theory might be: "why work towards a flawed ideal?" Rawls's aim is to show that political liberalism can be conceived in a well-ordered society, one marked by ideal conditions. In contrast, I have argued that political liberalism is unrealizable because justice as fairness is incompatible with a well-ordered society that is stable for the right reasons. If one wanted to refute my conclusion, it would be nonsensical to start from a nonideal theory of justice and attempt to work towards the flawed ideal of justice as fairness. To do so would be to embark on a Sisyphean quest for justice.

In “Transformative Constitutionalism and the Case of Religion: Defending the Moderate Hegemony of Liberalism,” Stephen Macedo argues that such a liberalization would occur in a liberal constitutional democracy. Macedo asserts that “liberal constitutional institutions have a [deep] constitutive role, which is to work at shaping or constituting all forms of diversity over the course of time, so that people are *satisfied* leading lives of bounded individual freedom” (Macedo 1998, 58). He then claims that for a liberal constitutional regime to endure and thrive, “it must constitute the private realm in its image, and it must form citizens willing to observe its limits and able to pursue its aspirations” (ibid.). Macedo’s claim that modern liberal constitutional democracies require the right sort of civic culture in order to survive appears reasonable in my view, as does his further claim that religious communities “*of the right sort*”—namely, those that espouse reasonable doctrines—are a vital part of this culture (65).

Macedo cites the American Catholic Church as an example of a religious sect that is “relatively flexible and open to the values of the larger liberal democratic society” (Macedo 1998, 66). I believe that he rightly argues that the Catholic Church’s encounter with American liberal democracy led to its liberalization in the 1960s, and that this liberalization occurred not directly as a result of public schooling but rather from “indirect educative mechanisms” such as the civic culture itself (67).<sup>50</sup> Still, I do not believe that the “transformative agenda”<sup>51</sup> of liberalism provides a loophole in Rawls’s theory that enables it to avoid the tension between justice and stability. Although the liberalization of American Catholicism may have occurred

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<sup>50</sup> The liberalization of the American Catholic Church seems to reflect Macedo’s observation that “the natural course of things in a healthy liberal democracy will be that beliefs in tension with fundamental liberal democratic commitments will be diminished in importance” (Macedo 1998, 69).

<sup>51</sup> See J. Judd Owen, *Religion and the Demise of Liberal Rationalism* (Chicago: The University of Chicago Press, 2001, Chapter 5, especially pp. 117-127).

without revolt, the process in a liberal democracy that is required to achieve a civic culture which includes only reasonable religious doctrines seems troubling in the context of Rawlsian justice.<sup>52</sup>

The liberalization of unreasonable religious sects would begin in part with their exclusion from the political discourse in a liberal democracy. Marilyn Friedman addresses the problem of such principled exclusion in “John Rawls and the Political Coercion of Unreasonable People.” In her essay she observes that Rawls takes a firm stance on the way to treat unreasonable doctrines, citing a passage in *Political Liberalism* which states that a liberal society must “contain them ‘like war and disease—so that they do not overturn political justice’” (Friedman 22). Friedman understands “containment” of an illiberal doctrine to require many things, including but not limited to: regulating and controlling the media in which it is expressed and promulgated, suppressing its expression and enactment by adherents, excluding its supporters from the legitimation pool,<sup>53</sup> and denying them the full protection of the system’s basic rights and liberties, particularly freedom of expression (23). She concludes that this type of state coercion is illegitimate and inconsistent with Rawls’s aims. But is Friedman’s interpretation of “containment” too extreme?

One who believes that Friedman’s view of containment is untenable could argue that Rawls’s theory does not advocate the denial of basic rights and liberties to members of illiberal religious sects. As a rule, Macedo states, “no liberal advocates *censoring* religious speech” and liberal people do not seek to coerce people on grounds that they cannot share (Macedo 1998, 71). He then affirms the liberal hope that the state will not punish unreasonable sects or marginalize

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<sup>52</sup> We may reasonably infer that Rawls’s ideally just society would have far higher standards of justice than contemporary American society, and that the liberalization of the American Catholic Church would have to continue in order to expunge all patriarchal beliefs—perhaps even the exclusion of women from the priesthood.

<sup>53</sup> As Friedman defines it, the legitimation pool is the “collection of citizens whose consent to the political system confirms its legitimacy” (Friedman 23).

them through statutory force, but instead that civil culture will do so. In his view, those who view public disapprobation as censorship only have “their own hypersensitivity to blame” (ibid.).

However, I do not think that Friedman is entirely wrong. Although unreasonable persons appear to be “free-riders” under the definition Rawls gives,<sup>54</sup> and his theory suggests that even free-riders should not be deprived of their basic rights and liberties, the fact remains that those who break laws will face punishment under partial compliance theory. Whether this punishment is as extreme as Friedman suggests is another question, one that I shall not address here. What we may conclude is that the liberal state will not be absolutely neutral towards illiberal doctrines, and that it may have to use state force in cases where members of such doctrines violate the requirements of justice.<sup>55</sup> Consistent with Rawls’s theory, Friedman’s argument supports my conclusion that the state would have to intervene in the affairs of the family if required to prevent the indoctrination of patriarchal religious beliefs in children.

Are the forces required for the liberalization of unreasonable sects *illegitimately* coercive and oppressive as Friedman suggests? Perhaps not: it may be the case that such forces legitimately cull away the comprehensive views that Rawls mistakenly classifies as reasonable in *Political Liberalism*, but which are actually unreasonable in light of his theory of justice. If Friedman’s view of the containment of unreasonable doctrines is wrong, then Rawls’s theory *appears* salvageable by drawing in the boundaries of the reasonable and excluding sects that do not conform to the demands of justice. But all that this “solution” accomplishes is bringing to the forefront the problem of using state force to police the family. The questions that this problem raises do not concern societies in the distant future, but those in the present. What is a

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<sup>54</sup> See John Rawls, *A Theory of Justice* (pp. 340).

<sup>55</sup> Even in cases where state coercion is unnecessary, Macedo notes that social practices may create “a system of unequal psychological taxation sufficient to drive out certain patterns of deeply held belief and practice, not all at once but over the course of generations” (Macedo 1998, 72).

liberal democratic society to do in the time it takes unreasonable doctrines to liberalize? Must the political liberal tolerate injustice in the family during this period of transition? If so, then what becomes of Rawlsian justice? Should the political liberal simply forsake Rawls's project of realizing a society that is just and stable in the meantime?

All of the questions raised by the problem of the family in Rawls's theory strongly indicate that political liberalism is unrealizable in societies that have yet to transition to a comprehensively liberal civic culture.<sup>56</sup> *So what*—one might object—*this does not show that political liberalism is utopian. One need only to consider the fact that such a problem would not arise in a society where all of the comprehensive doctrines are reasonable from the start.* How could I respond to such a claim? It does not seem impossible to imagine a hypothetical liberal society in the future. Still, if the only way to deflect my criticism of Rawls is by positing hypothetical liberal societies, then political liberalism is contingent and therefore trivial. Why should anyone care about political liberalism if it can only succeed in the absence of illiberal doctrines? This would suggest the failure of Rawls's project of making justice "work" in a society marked by reasonable pluralism.<sup>57</sup>

Even if such a uniformly liberal society were achievable in spite of the fact of reasonable pluralism, there would remain the problem of dealing with an outgrowth of illiberal religious doctrines. Given that freedom of conscience is protected under the first principle of justice, it follows that the conditions of a democratic society underwritten by justice as fairness would provide fertile ground for the development of illiberal worldviews at odds with the requirements of Rawlsian justice. To deny this possibility is to deny the fact of reasonable pluralism that

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<sup>56</sup> A comprehensively liberal *civic culture* would comprise only reasonable doctrines. It is important not to confuse a comprehensively liberal civic culture with comprehensive liberalism, or assume that the former—a characteristic of the civic culture—must be rooted in the latter—a conception of liberalism.

<sup>57</sup> The assumption in Rawls's theory that reasonable pluralism will mark a democratic society is alone enough to shoot down this objection from its utopian pedestal.

motivates Rawls to shift to a political conception of justice. Any state hoping to achieve Rawlsian justice could not deal with illiberal outgrowths without facing the same problems that I have addressed throughout this section. Despite this powerful criticism, my conclusion stands: since it is impossible to maintain a comprehensively liberal civic culture in a way that is fully compatible with Rawls's theory, his conception of political liberalism is unrealistically utopian.

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